

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REVEREND WESLEY CARROLL,

Plaintiff,

09cv1509

ELECTRONICALLY FILED

v.

G. PURATY, ET AL.,

Defendants.

**ORDER OF COURT OVERRULING
PLAINTIFF'S OBJECTIONS (DOC. NO. 5) AND
ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION (DOC. NO. 3)**

AND NOW, this 17th day of February, 2010, after careful consideration of the Report and Recommendation ("R&R") of United States Magistrate Judge Amy Reynolds Hay (Doc. No. 3), plaintiff Reverend Wesley Carroll's objections thereto (Doc. No. 5), and the pleadings and filings in this case and in plaintiff's previous actions seeking a writ of mandamus at Civil Action Nos. 07-1707 and 09-1465, the Court adopts the R&R in its entirety and will overrule plaintiff's objections and dismiss his petition for writ of mandamus pre-service pursuant to the Court's inherent power to control its own dockets.

Specifically, the instant petition is repetitious of a prior mandamus petition which this Court dismissed as frivolous on February 14, 2008, which dismissal was affirmed by the United States Court of Appeals for the Third Circuit on April 8, 2008. *In re Carroll*, 272 Fed.Appx. 148 (3d Cir. 2008). "Repetitious litigation of virtually identical causes of action may be dismissed . . . as frivolous or malicious." *McWilliams v. Colorado*, 121 F.3d 573, 574 (10th Cir. 1997) (quotation marks and alteration omitted). Here, the instant mandamus petition is clearly repetitious of the earlier mandamus petition, with Carroll again naming (misnaming, actually) the

Clerk of this Court and the Clerk for the United States Court of Appeals for the Third Circuit accusing the Clerks of not accepting Prisoner Carroll's many filings.

Additionally, the current petition should likewise be dismissed as frivolous, being unsupported by anything other than bald assertions and as being clearly contradicted by the dockets of this Court, which reflect a steady stream of filings by Prisoner Carroll.

Further, as to Prisoner Carroll's attempt to mandamus the Clerk of the Court of Appeals, such motion is more properly addressed to the Court of Appeals. *Trackwell v. U.S. Government*, 472 F.3d 1242, 1247 (10th Cir. 2007). Plaintiff may file a mandamus petition in the Court of Appeals seeking mandamus against the Clerk of that Court, as well as staff of that Court, if he so desires, but this Court will not aid him to pursue patently frivolous mandamus actions by transferring this petition (or that part of this petition which seeks mandamus relief against officers of that Court) to the Court of Appeals.

Accordingly, IT IS HEREBY ORDERED that the Court adopts the R&R (Doc. No. 3) in its entirety, overrules plaintiff's objections (Doc. No. 5), and dismisses the petition for writ of mandamus (Doc. No. 1). IT IS FURTHER ORDERED that Plaintiff's remaining additional pending miscellaneous pretrial motions (Docs. No. 6 and 7) seeking a variety of litigation related requests are HEREBY DENIED as moot.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties

The Honorable Amy Reynolds Hay
United States Magistrate Judge

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